IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Chhotu alias Chhotia Vs. State of Rajasthan

S.B.CRIMINAL APPEAL NO.254/1988
against the judgment dt.2.6.1988
passed the Sessions Judge, Pali,
in Sessions Case No.32/1982.

Date of Judgment: July 05, 2007

P R E S E N T

HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.P.N.Mohanani, for appellant.
Mr.V.R.Mehta, Public Prosecutor.

BY THE COURT:

1. This is an appeal against the judgment of learned Sessions Judge, Pali, whereby he convicted accused appellant Chhotu alias Chhotia under Section 376 IPC and sentenced him to three years' rigorous imprisonment and to pay a fine of Rs.2000/- & in default, to further undergo three months' simple imprisonment.

2. The charge against the accused Chhotu was that on 17.2.1982, he committed rape on Mst.Mohini at Village Manpura.

The charge under Section 376 IPC was explained to the accused, to which he pleaded not guilty. The prosecution examined 14 witnesses. The statement of accused Chhotu was recorded under Section 313 CrPC. He produced one witness viz; Babu in his defence. After hearing the arguments, the learned trial Judge convicted & sentenced the accused appellant Chhotu in the manner as aforesaid.

3. At the outset, learned counsel for the appellant has submitted that in this case, as per the F.I.R., Ex.P.2 and Ex.P.10, the incident is of 3.2.1982 but the charge has been framed regarding commission of rape about dated 17.2.1982, whereas the prosecutrix Mst.Mohini (PW 4) stated in her statement recorded on 26.6.1984 that the incident is of three months before the preceding year, which comes to about September, 1982. Therefore, on this score, there is an apparent contradiction and the judgment of conviction passed by the learned trial Judge deserves to be set aside.

4. I have gone through these three documents. It appears that in Ex.P.10, there is an apparent interpolation by pasting slip in which the date of information of incident has been given as 17.2.1982, whereas in Ex.P.2, it has been stated to be of 4.2.1982. The charge has been framed of 17.2.1982. The

incident as per the doctor's report dated 4.2.1982 should have been of 3.2.1982 thus, the charge has been wrongly framed by the learned trial Judge. With regard to this contradiction in the date of incident, it can be termed as error in framing the charge prescribed under Sec.464 CrPC, wherein such an apparent error in charge about the date of incident, the Court cannot declare that finding, sentence or order invalid, unless failure of justice has been occasioned thereby and if the failure of justice has been occasioned then the Court of appeal, confirmation or revision, can direct the new trial to be held, provided of course that if no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction. Of-course, this is a technical error and the Court can direct a new trial as required under Section 464 of the Code of Criminal Procedure, but under sub-section (2) of Section 465 CrPC, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. Here, apparently, this objection was not raised till the conclusion of the trial and even after 25 years of the incident in this appeal as well. If this error is looked into in the light of the statement of Mst.Mohini in which she has not specifically stated the date of incident and a hypothetical version has been given regarding the incident to be about three months before the preceding year of 1984, which comes to about September,

1982, it does not coincide with the February and now if the new trial is ordered, it will result in failure of justice and on this score, the conviction of accused appellant deserves to be set aside.

5. Even if the case is looked only on merits, it is an admitted position from the statement of Bhawani Ram (PW 12), the investigating officer, who has stated in the cross examination that a report was lodged under Section 435 IPC by accused Chhotu against the family members of Mst.Mohini prior to the report Ex.P.2. In this way, the enmity is proved and in the light of this enmity, if the statements of Mst.Mohini are looked into, she has stated that she alongwith Viram, Sushila and Sital went for grazing the cattle. Accused Chhotu came and objected & committed rape on her, whereas Sital alias Chhitar Ram (PW 9) is a hostile witness and Viram (PW 5) has stated that he and Sital went to call Baba and they saw the incident while sitting 15-20 steps away, to which Mst.Mohini (PW 4) has said nothing. On the contrary, she stated that she left with Sital. Sushila (PW 10) who was also accompanying the prosecutrix, has stated that she left the place on being threatened. In this way, there is an apparent uncorroboration in the statements of the eye witnesses of the prosecution and that of the prosecutrix Mst.Mohini.

6. Dr.R.Singhvi (PW 6), who has noted laceration marks on

posterior part of vulva, has stated that in the report Ex.P.5, he has not given any opinion about the commission of rape. Thus, even on merits, the prosecution case suffers from infirmities and doubts, for which the accused is entitled to be benefited.

7. Consequently, the appeal is allowed. The sentence and order passed by the learned Sessions Judge, Pali against the appellant Chhotu alias Chhotia by his judgment dated 2.6.1988 is set aside and he is acquitted of the charge under Sec.376 IPC. As the appellant Chhotu is on bail, his bail bonds stand discharged.

(DEO NARAYAN THANVI), J.

RANKAWAT JK, PS